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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO.: 10/758,754
APPLICANT: Mantis, Lee
FILED: January 16, 2004
DOCKET NO.: 135/2
CUSTOMER NO.: 36829

CONFIRM. NO.: 6441
ART UNIT: 3781
EXAMINER: Castellano, Stephen

FOR: "CARRY-OUT FOOD CONTAINER"

**PETITION TO THE COMMISSIONER
TO WITHDRAW HOLDING OF ABANDONMENT**

MAILSTOP: ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a petition for the withdrawal of the Office's holding that the above-referenced application has become abandoned due to Applicant's failure to timely pay the required issue and publication fees within the statutory period of three months.

DISCUSSION

Petitioner received the attached Notice of Abandonment dated March 25, 2008 (Exhibit A) indicating that the subject application was abandoned because of a failure to timely pay the required issue fee and publication fee within the statutory period of three months.

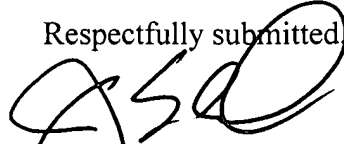
By way of answer and explanation, Petitioner respectfully asserts that the required government fees were in fact submitted to the Office by the deadline of February 28, 2008. With the submission of these fees, a typographical error occurred in the date listed on the "Certificate of Mailing" for the Issue Fee Transmittal. See Declaration of Kristen Bryant, Exhibit B. This transmittal form mistakenly indicated a date of *February 29, 2008*—one day after the actual submission deadline. The return post card and check that accompanied the form, however, both had the correct and actual submission date of February 28, 2008. Copies of the check and post card are attached at Exhibit C.

Thus, as evidenced herein, Petitioner respectfully asserts that Applicant's issue and publication fees were timely submitted on the deadline of February 28, 2008, and that the error in the date on the "Certificate of Mailing" resulting in the holding of abandonment was inadvertent.

For these reasons, Petitions requests that the present petition be granted and that the subject application be further processed for issuance.

If there are any fees required for this Petition, please charge the undersigned attorney's Deposit Account No. 50-2716. A duplicate of this paper is being submitted for this purpose.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'JJS', is written over the typed name and title of the attorney.

Jeffrey J. Schwartz
Attorney for Applicant
Reg. No. 37,532

SCHWARTZ LAW FIRM, P.C.
SouthPark Towers
6100 Fairview Road, Suite 1135
Charlotte, NC 28210
TEL: (704) 552-1889
FAX: (704) 552-1866
EMAIL: jjjs@schwartz-iplaw.com

EXHIBIT

A

Attached:

Copy of Notice of Abandonment received from the
United States Patent and Trademark Office



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,754	01/16/2004	Lee Mantis	135/2	6441

7590 03/25/2008
Schwartz Law Firm, P.C.
SouthPark Towers
Suite 530
6100 Fairview Road
Charlotte, NC 28210

COPY

EXAMINER	
CASTELLANO, STEPHEN J	
ART UNIT	PAPER NUMBER
3781	
MAIL DATE	DELIVERY MODE
03/25/2008	PAPER

Notice of Abandonment

This application is abandoned in view of:

1. ☐ The applicant's failure to timely file a proper reply to the Office letter mailed on _____.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission date _____), which is after the expiration of the period for reply (including a total extension of ____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of:
 - (1) a timely filed amendment which places the application in condition for allowance;
 - (2) a timely filed Notice of Appeal (with appeal fee);
 - (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box e below).
 - (d) ☐ No reply has been received.
2. ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☒ The issue fee and publication fee, if applicable, was received on 3-4-08 (with a Certificate of Mailing or Transmission date 2-29-08), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee required by 37 CFR 1.18 is \$ _____.
The publication fee, if required by 37 CFR 1.18(d), is \$ _____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawing have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

Petitions to revive under 37 CFR 1.137(a) or (b), or request to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Telephone inquiries should be directed to the Office of Data Management at (571) 272-4200.

Patent Publication Branch
Office of Data Management



Attachment to Notice of Abandonment

For questions concerning the notice contact
Office of Patent Publication

Image Assistance Center: 888-786-0101.

Information is also available on the USPTO Internet web site:
<http://www.uspto.gov/web/patents/pubs/abandonnotice.html>

Respond to the Notice of Abandonment by one of the following:

1. Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., a reply was in fact filed), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181 to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to 37 CFR § 1.8(b) Certificate of Mailing; 37 CFR § 1.10 "Express Mail" mailing; or MPEP 503 Postcard Receipt as Prima Facie Evidence. The petition should be addressed as follows:

By mail: Mail Stop: Issue Fee, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
By facsimile: 571-273-8300

2. Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (MPEP 711.03(c) II and 37 CFR § 1.181). No fee required

Where an applicant contends that the original Notice of Allowance and Fee(s) Due was never received, if adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
By facsimile: 571-273-8300

3. Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) or (b) (accompanied by the appropriate petition fee) is necessary to revive the abandoned application. The text of these rules is available on the USPTO Internet Web site. Forms for these petitions, "Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a)," PTO/SB/61, and "Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)," PTO/SB/64, are available in the forms section of the USPTO website: <http://www.uspto.gov>.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Mail Stop Petition, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
By facsimile: 571-273-8300

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment

EXHIBIT

B

Attached:
Declaration of Kristen Bryant



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO.:	10/758,754	CONFIRM. NO.:	6441
APPLICANT:	Mantis, Lee	ART UNIT:	3781
FILED:	January 16, 2004	EXAMINER:	Castellano, Stephen
DOCKET NO.:	135/2		
CUSTOMER NO.:	36829		

FOR: "CARRY-OUT FOOD CONTAINER"

DECLARATION OF KRISTEN BRYANT

MAILSTOP: ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Kristen Bryant, do hereby declare as follows:

1. I am currently employed by Schwartz Law Firm, P.C. as an administrative legal assistant, and have operated in this capacity since January of 2004.
2. On February 28, 2008, for the above-referenced patent application, I processed the Issue and Publication Fees together with the Issue Fee Transmittal Form (PTOL/85) for submission to the United States Patent and Trademark Office.
3. On February 28, 2008, I deposited the above-referenced fees and transmitted form with the United States Postal Service as first class mail in an envelope addressed to: MAILSTOP: ISSUE FEE, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.
4. In the "Certificate of Mailing" for this submission, I inadvertently indicated an incorrect mailing date of February 29, 2008, as opposed to the correct mailing date of February 28, 2008.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of her own knowledge are true; and all statements made on information and belief are believed to be true.

Kristen Bryant
Administrative Legal Assistant
Schwartz Law Firm, P.C.

EXHIBIT

C

Attached:

Copy of Check dated February 28, 2008

Copy of Return Postcard dated February 28, 2008



MAILSTOP: Issue Fee
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Date: 2.28.2008
Docket No. 1392
Serial No. 10158754
Client: L. Mantis

Please confirm receipt of the document(s) checked below by applying your date stamp (and Serial No.) and returning the postcard to us:

<input type="checkbox"/> Patent Application: (specification, claims, abstract)	
<input type="checkbox"/> Application Type: _____	
<input type="checkbox"/> Transmittal Letter	<input type="checkbox"/> Submission of Documents
<input type="checkbox"/> Fee Transmittal	<input type="checkbox"/> Response to Office Action
<input type="checkbox"/> Filing Fee \$ _____	<input type="checkbox"/> dated _____
<input type="checkbox"/> Status Request	<input type="checkbox"/> Req for Ext of Time
<input type="checkbox"/> Power of Attorney	<input type="checkbox"/> Terminal Disclaimer
<input type="checkbox"/> Oath or Declaration	<input type="checkbox"/> IDS
<input type="checkbox"/> Application Data Sheet	<input type="checkbox"/> PTO Form 1449 w/ _____ Refs
<input type="checkbox"/> Informal Drawings	<input checked="" type="checkbox"/> PTOL Form 85B
<input type="checkbox"/> Formal Drawings	<input type="checkbox"/> Main Fee Transmittal for
<input type="checkbox"/> Assign Cover Sheet	<input type="checkbox"/> Year _____
<input type="checkbox"/> Assign and Fee \$ _____	<input checked="" type="checkbox"/> Fee of \$ <u>1020.00</u>
<input type="checkbox"/> Other	<input type="checkbox"/> Express Mail No. _____

COPY

SCHWARTZ LAW FIRM, P.C.

GENERAL ACCOUNT
6100 FAIRVIEW RD., SUITE 530
CHARLOTTE, NC 28210
(704) 552-1889



WACH

66-21/530

2927

2/28/2008

PAY TO THE
ORDER OF Commissioner for Patents and Trademarks

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One Thousand Twenty and 00/100

DOLLARS

Commissioner for Patents and Trademarks
PO Box 1450
Alexandria, VA 22313-1450

MEMO:

Security features. Details on back.

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Commissioner for Patents and Trademarks

2/28/2008

Issue & Pub Fee

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General

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Commissioner for Patents and Trademarks

2/28/2008

Issue & Pub Fee

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General

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